

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 134, "Underground Storage Tank Licensing and Certification Programs," and Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The proposed changes amend existing rules and adopt new rules requiring underground storage tank (UST) operator training, requiring closure investigations be conducted by a certified groundwater professional, amending the conflict of interest provisions for conducting compliance inspections, clarifying the biennial compliance inspection requirement, and providing piping leak detection requirements at unstaffed sites.

The Iowa Legislature passed legislation (2007 Iowa Acts, Senate File 499) granting rule-making authority to the Environmental Protection Commission in response to provisions of the federal Energy Policy Act of 2005 (Federal Act). The Iowa legislation requires the Commission to adopt rules consistent with Environmental Protection Agency (EPA) guidance (see <http://www.epa.gov/OUST/index.htm>) requiring underground storage tank operator training rules. (See Iowa Code section 455B.474(8)"a.")

EPA guidance requires three classes of operators: Class A operators responsible for managing resources and personnel to achieve and maintain compliance; Class B operators responsible for implementing day-to-day aspects of operating, maintaining and record keeping for one or more facilities; and Class C operators who are the on-site employees controlling or monitoring the dispensing of fuel and who are the first line of response to emergency conditions. One person can be more than one class of operator.

The amendments provide responsibilities for each class of operator and criteria for training. The Department does not plan to provide training for operators, but intends to approve training classes for Class A and Class B operators. The training will be provided by third parties or within a company's normal training of personnel. All training must be approved by the Department. The amendments do allow for approval of on-line computer training that meets the requirements. Class C operators can be trained by the Class B operator.

Class A and Class B operators must be designated and trained by August 1, 2011. Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility are required for Class C operators, who must receive some basic training within six months of the effective date of these amendments.

The amendments to the conflict of interest provisions for compliance inspections are proposed to meet the EPA guidance for inspections required in the Energy Policy Act. The existing rules were adopted prior to the Act and EPA guidance. The EPA guidance does not allow compliance inspections to be conducted by licensed inspectors who are employees of the underground storage tank owner or operator. The change is required for the Department to continue receiving federal funding and EPA state program approval.

The rule change for piping leak detection at unstaffed facilities requires in-line leak detection to shut off the submersible pump and stop product flow to the dispenser. In-line leak detection is for catastrophic leaks in pressurized product lines. These systems are generally designed to alert the on-site operator of a catastrophic release by slowing down product flow or activating an alarm so that the submersible pump

can be immediately shut down. When facilities are not staffed, there is no one available to respond to an alarm. At existing sites that operate unstaffed, this requirement must be met by June 1, 2010.

The amendments require that a groundwater professional certified by the Department under 567—Chapter 134, Part A, conduct the soil and groundwater investigation required when underground storage tanks are permanently closed by removal or filling in place. This change gives the Department discretion to waive this requirement under certain circumstances and if Department staff are willing and able to provide direct supervision of the tank closure.

Any interested person may submit written comments on the proposed amendments on or before July 10, 2009. Written comments should be sent to the Iowa Department of Natural Resources, Attn. Paul Nelson, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.iowa.gov.

Three public hearings will be held at 1 p.m. on the dates indicated at the following locations, at which time persons may present their views either orally or in writing.

Tuesday, July 7, 2009	Denison Public Meeting Room 111 N. Main Street Denison, Iowa
Wednesday, July 8, 2009	Coralville Public Library Meeting Room B 1401 5th Street Coralville, Iowa
Thursday, July 9, 2009	Wallace State Office Building 5th Floor Conference Room 502 E. 9th Street Des Moines, Iowa

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 134.14(6):

134.14(6) Conflict of interest. A compliance inspector shall not conduct a compliance inspection if the compliance inspector is the owner or operator of the UST system, an employee of the owner or operator of the UST system, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 2. Adopt the following **new** definitions in rule **567—135.2(455B)**:

“Class A operator” means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate individuals are trained in the proper operation and maintenance of the underground storage tank system, the maintenance of all required records, the procedures for response to emergencies caused by releases or spills, and assuring financial responsibility and documentation to the department or its representatives as required.

“Class B operator” means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and record keeping for underground storage tanks at one or more facilities. A Class B operator typically monitors, maintains and ensures that release detection methods and record-keeping and reporting requirements are met; release prevention equipment and record-keeping and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

“Class C operator” means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

ITEM 3. Adopt the following **new** subrules 135.4(6) to 135.4(11):

135.4(6) Training required for UST operators.

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities, which may designate only Class A and Class B operators.

b. A facility may not operate after August 8, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. The Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device and a sign posted in a conspicuous place that includes the name and telephone number of the facility owner, an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(9) no later than August 8, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the department. The retraining must occur within 60 days from departmental notice for Class A or Class B operators and within 15 days for Class C operators.

135.4(7) UST operator responsibilities.

a. Class A operator: Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

(1) Class A operators assist the owner by ensuring that underground tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

(2) Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(3) Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators.

(4) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance

inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(5) The owner or operator of a site undergoing a change in ownership shall designate a Class A operator prior to bringing the UST system into operation. The Class A operator is responsible for ensuring that all necessary documentation for change of ownership is completed and submitted to the department prior to bringing the UST system into operation. If a UST was temporarily closed or newly installed and will be brought into operation, the Class A operator must ensure that the department's checklist for returning a UST to service or initiating service is followed and that the necessary documentation is submitted to the department.

b. Class B operator. A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

(1) Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

(2) Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made available to the department and compliance inspectors.

(3) Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

(4) Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

(5) Performing UST release detection in accordance with rule 567—135.5(455B).

(6) Monitoring the status of UST release detection.

(7) Meeting spill prevention, overfill prevention, and corrosion protection requirements.

(8) Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

(9) Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide required training for Class C operators.

(10) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(11) The owner or operator of a site undergoing a change in ownership shall designate a Class B operator prior to bringing the UST system into operation. The Class B operator must conduct an inspection using the department's inspection checklist and submit the completed checklist along with the change of ownership form prior to operation. If a UST system was temporarily closed, the Class B operator shall ensure that the department's checklist for returning a UST to service is followed and that the necessary documentation is submitted to the department prior to operation of the UST system.

c. Class C operator. A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after [insert the effective date of these amendments], written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

135.4(8) UST operator training course requirements. Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

a. Class A operators. To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in this chapter and in 567—Chapters 134 and 136. The course must also provide a general overview of the department’s UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

- (1) Components and materials of underground storage tank systems.
- (2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.
- (3) Spill and overfill prevention, to include the American Petroleum Institute (API) Publication 1621, “Recommended Practice for Bulk Liquid Stock Control at Retail Outlets,” and National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code.”
- (4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637, “Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals.”
- (5) Proper fuel ordering and delivery, including procedures in API RP1007, “Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles.”
- (6) Release detection methods and related reporting requirements.
- (7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.
- (8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department’s “Iowa UST Operator Inspection Checklist” or a checklist template similar to the department’s document.
- (9) Requirement and content of third-party compliance inspections.
- (10) How to properly respond to an emergency, including hazardous conditions.
- (11) Product and equipment compatibility, including the department’s ethanol compatibility guidance and certification.
- (12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.
- (13) Notification of installation and storage tank registration requirements.
- (14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.
- (15) Temporary and permanent closure procedures and requirements.
- (16) NESHAP vapor recovery requirements.
- (17) Conditions under which the department may stop fuel delivery and take enforcement action.
- (18) Ensuring that annual tank management fees are paid.
- (19) Ensuring that suspected and confirmed releases are investigated and reported according to subrule 135.6(1).

b. Class B operators. To be certified as a Class B operator, the individual must successfully complete a department-approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department’s UST program, purpose, groundwater protection goals, public safety and administrative requirements.

Training shall cover the operation and maintenance requirements set forth in this chapter, including, but not limited to, the following:

- (1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.
- (2) Components and materials of underground storage tank systems.
- (3) Spill and overfill prevention.
- (4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637.
- (5) Proper fuel ordering and delivery, including procedures from API RP1007.
- (6) Methods of release detection and related reporting requirements.
- (7) Corrosion protection and related testing.
- (8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.
- (9) Requirement and content of third-party compliance inspections.
- (10) Emergency response, reporting and investigating releases.
- (11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.
- (12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.
- (13) Notification of installation and storage tank registration requirements.
- (14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.
- (15) Reporting and record-keeping requirements.
- (16) Overview of Class C operator training requirements.
- (17) NESHAP vapor recovery requirements.
- (18) Conditions under which the department may stop fuel delivery and take enforcement action.

c. Class C operators. To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from a UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

135.4(9) Examination and review requirement. Class A and Class B operators must complete the department-approved training course and take an examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

a. Reciprocity. The department may waive the training course for operators upon a showing of successful completion of a training course and examination approved by another state or regulatory agency that the department determines are substantially equivalent to the UST requirements contained in this chapter.

b. Transferability to another UST site. A Class A and Class B operator may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13). Class A or Class B operators transferring from other states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

135.4(10) Timing of UST operator training.

a. An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after [insert the effective date of these amendments] contingent upon availability of approved training providers, but not later than August 8, 2011, except as provided in paragraph 135.4(6)“b.”

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

c. Class C operators must be trained before assuming the duties of a Class C operator. Within six months after [insert the effective date of these amendments], written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

135.4(11) Documentation of operator training.

a. The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with subrule 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the underground storage tank facility and must include:

(1) The name of each operator and the operator’s class(es); contact information for the Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) for which an operator is responsible if more than one site.

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5).

c. A copy of the certificates of training for Class B and Class C operators shall be conspicuously posted at each facility for which the operator is responsible.

d. Class A and Class B operator contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

ITEM 4. Adopt the following **new** paragraph **135.5(1)“e”**:

e. UST sites with no on-site personnel.

(1) Piping in-line leak detectors that shut off the submersible pump and stop product flow to the dispenser must be used. At existing sites without an electronic line leak detector, the electronic line leak detector must be installed by June 1, 2010.

(2) At sites with containment basins and sump sensors for leak detection, the sump sensors must shut off product flow when a leak is detected.

ITEM 5. Amend paragraph **135.15(3)“a,”** introductory paragraph, as follows:

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted by a certified groundwater professional licensed under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

ITEM 6. Rescind subrule 135.20(1) and adopt the following **new** subrule in lieu thereof:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior site inspection. Compliance site inspections must be separated by at least six months.

ITEM 7. Adopt the following **new** subrule 135.20(4):

135.20(4) Conflict of interest. A compliance inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected, or a person having daily on-site responsibility for the operation and maintenance of the UST system.